IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1046 OF 2004

Maruti Dhondi Gurav .. Appellant

Versus

Rajaram Hari Patil & Ors. .. Respondents

Mr.Viswas S.Deokar for appellant

Mr.S.S.Patwardhan for respondents

CORAM : P.V.KAKADE, J.

DATE : 8TH SEPTEMBER, 2004.

P.C.:

1. This is an appeal preferred by the Appellant-plaintiff against the Judgment and Order passed by 4th Additional District Judge, Kolhapur in Civil Appeal No.606 of 1997 allowing the Appeal filed by the Respondents and setting aside the Decree passed by the Civil Judge, Jr.Division Gargoti at Gargoti in

Regular Civil Suit No.23 of 1997 for permanent injunction.

2. I heard the learned counsel for both the sides. Perused the record.

. The Appellant-plaintiff is a resident of village Nitwade, Tal. Bhudargad, Dist. Kolhapur. The suit property is Grampanchayat property No.29 admeasuring 40’ x 15’ in the said village. On the eastern side of the suit property there is Gargoti Kadgaon road, on the western side there is Grampanchayat road, on the southern side there is property of Shivaji Ashru Powar and on the northern side there is property belonging to Ramling Devasthan and office of Ramling Society. It was the case of the plaintiff that the suit property is his ancestral property and he is using it for keeping the agricultural implements. According to him he was paying the grampanchayat tax since long and defendants had no concerned with the suit property. Plaintiff alleged that due to political rivalry, defendants were intending to expand office of Ramling Society and therefore they have demolished the shed of plaintiff’s property and removed the agricultural implements. Hence the suit for

perpetual injunction came to be filed against the defendants.

. The defendants contested the suit with a specific contention that the suit property is part and parcel property of Ramling Devasthan. There is a open place admeasuring 20 x 40 ft. in front of the Temple and in between the office of the society. The open place is kept as a way for procession of Palanquin God Ramling and hence the suit was sought to be dismissed.

. The learned Civil Judge was of the view that the plaintiff had proved his ownership and also proved that his possession was obstructed by the defendants and as such the suit for injunction came to be decreed. The Appeal was preferred against the said order and the Addl. District Judge, Kolhapur reversed the findings of the lower court and came to the conclusion that the plaintiff - appellant had failed to prove his lawful possession with reference to the valid title to the suit property. He also held that there was no question of obstruction from the defendants and hence the appeal was allowed. Hence the present appeal.

3. Perusal of the judgment of both the courts below, it is seen that the learned Civil Judge came to the conclusion that plaintiff had proved his ownership title to the suit property on the basis of extract of proceeding of village panchayat. It was also observed that the civil judge was of the opinion that on the basis of available evidence that the plaintiff had proved the factum of possession of the suit property but said evidence is not sufficient to prove his ownership title.

. The learned lower appellate court has concluded that evidence on record was not sufficient to hold that the plaintiff was in lawful possession of the suit property and therefore, it must be held that both the courts have come to the conclusion that the plaintiff has not proved his ownership title to the suit property though specifically he was called upon to do so. It is significant to note that the findings recorded by the Civil Court to the effect that the plaintiff has failed to prove his fact to the property is not challenged by the appellant-plaintiff before the District Court and therefore that finding stands as final as on today. The learned counsel for the Appellant urged that what he was

seeking was that he should not be dispossessed by the owner of the property except by recourse to law. In other words what the present appellant is seeking is at this juncture is protection of this Court or admittedly illegal possession in the suit property, which cannot be allowed in law.

4. Time and again it is well established legal principle that Section 100 of the Civil Procedure Code contemplates that the Second Appeal cannot be entertained unless any substantial question of law involved therein. In my view, for determining whether a case "involves" a substantial question of law the test is not merely the importance of the question but it is important to the case itself necessitating a decision of the question, the appropriate test for determining whether the question of law is raised in case is substantial would be to see whether it directly and substantially affects the rights of the parties. When I observed "rights of the parties" what is contemplated is legal rights and not the rights of admitted trespassers.

. Therefore, in the circumstances I do not see any reason as to why this appeal should be admitted and

entertained at all.

. In the result the appeal stands dismissed in limine.